

*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

NORTHERN REGIONAL OFFICE  
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Secretary of Natural Resources

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Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Rappahannock Plantation, LLC  
FOR  
Plantation Woods  
VWP General Permit Tracking No. WP4-16-1456**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Rappahannock Plantation, LLC, regarding Plantation Woods, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
5. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
9. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
10. "Rappahannock Plantation" means Rappahannock Plantation, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Rappahannock Plantation is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
12. "Site" or "Property" means the approximately 133-acre development known as the Plantation Woods located at 6811 Massaponax Church Road, in Spotsylvania County, Virginia.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
15. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The permittee for Plantation Woods is Rappahannock Plantation, LLC. The Plantation Woods project consists of the development of a single-family home residential community and associated infrastructure.
2. Virginia Water Protection (VWP) General Permit (GP) Tracking No. WP4-16-1456 was authorized on September 11, 2017, authorizing the impact of 0.08 acre of surface waters at the Site. The authorized impacts consisted of permanent impacts to 0.03 acre of palustrine forested wetland and 297 linear feet (0.04 acre) of stream channel, and temporary impacts to 30 linear feet (0.01 acre) of stream channel.
3. On April 15, 2020, DEQ received notification that 2,275 linear feet of stream channel had been impacted from the deposition of fill material resulting from sediment laden stormwater inundating and overtopping the Site's erosion and sediment control structures. The reported impacts had variable depths, with approximately 2,000 linear feet of stream channel having sediment impacts less than 2 inches thick, and the remaining 275 linear feet of impacted stream channel containing sediment deposits ranging from 2-8 inches thick.
4. Part II.R of VWP GP No. WP4-16-1456 states that "Except in compliance with this VWP general permit, it shall be unlawful for the permittee to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions."
5. Additionally, Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit the filling of surface waters without a Permit issued by the Director. The stream



impacts described above in Paragraph C(3) are not authorized under VWP GP Tracking No. WP4-16-1456 and Rappahannock Plantation does not have a Permit for the impacts.

6. On April 23, 2020, DEQ issued a Notice of Violation (NOV No. 2004-001443) to Rappahannock Plantation.
7. On April 24, 2020, DEQ received a written response to the NOV from a representative of Rappahannock Plantation. The NOV response provided photographic documentation and described corrective actions performed by Rappahannock Plantation to remove the deposited sediment, restore impacted surface waters, and improve the Site's erosion and sediment controls to help prevent future recurrence of similar discharges.
8. Additional information on upgrades/corrective actions regarding the Site's erosion and sediment control structures was submitted to DEQ via email on May 1, 2020.
9. On May 6, 2020, DEQ held a conference call with representatives of Rappahannock Plantation to discuss the NOV response, the status of corrective actions, and DEQ enforcement proceedings. DEQ and Rappahannock Plantation agreed for DEQ VWP compliance staff to conduct an inspection of the Site to observe the corrective actions performed in response to the NOV.
10. DEQ VWP staff conducted the follow-up Site inspection on May 14, 2020. DEQ compliance requested the performance of some minor corrective actions as listed in corresponding inspection report. Documentation was submitted to DEQ via email on May 29, 2020, demonstrating that it had completed the requested corrective actions. DEQ VWP staff sent an email reply on June 5, 2020, confirming acceptance of the submission and that no further corrective actions were required.
11. Based on the April 15, 2020, notification of unauthorized impacts, the April 23, 2020 NOV, the April 24, 2020 NOV response, the May 6, 2020 enforcement conference call, the May 14, 2020 Site inspection, and documentation/associated files and related correspondence between DEQ and representatives of Rappahannock Plantation, the Board concludes that Rappahannock Plantation has violated Part III.R of VWP GP No. WP4-16-1456, Va. Code § 62.1-44.15:20, and the Regulations at 9 VAC 25-210-50 for unauthorized impacts to surface waters as described above in paragraphs C(1) through C(10).

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Rappahannock Plantation, and Rappahannock Plantation agrees to pay a civil charge of **\$9,100** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Rappahannock Plantation shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Rappahannock Plantation shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Rappahannock Plantation for good cause shown by Rappahannock Plantation, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2004-001443 dated April 23, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Rappahannock Plantation admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Rappahannock Plantation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Rappahannock Plantation declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Rappahannock Plantation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the



Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Rappahannock Plantation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Rappahannock Plantation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rappahannock Plantation shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Rappahannock Plantation.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Rappahannock Plantation has completed all of the requirements of the Order;
  - b. Rappahannock Plantation petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Rappahannock Plantation.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rappahannock Plantation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Rappahannock Plantation and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Rappahannock Plantation certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Rappahannock Plantation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Rappahannock Plantation.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Rappahannock Plantation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2<sup>nd</sup> day of April, 2021.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Consent Order

Rappahannock Plantation, LLC; VWP General Permit Tracking No. WP4-16-1456

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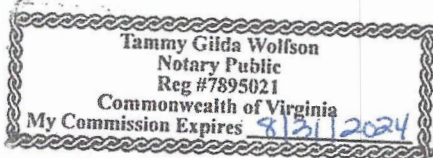
Rappahannock Plantation, LLC voluntarily agrees to the issuance of this Order.

Date: 1/26/21 By: [Signature], MANAGER  
(Person) (Title)  
Rappahannock Plantation, LLC

Commonwealth of Virginia

City/County of Fredericksburg

The foregoing document was signed and acknowledged before me this 26 day of January, 2021, by Sean Haynes who is Manager of Rappahannock Plantation, LLC, on behalf of the company.



[Signature]  
Notary Public  
7895021  
Registration No.

My commission expires: 8/31/2024

Notary seal:

8/21/2024